

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXXX

Petitioner

v

File No. 122350-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _7th__ day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 14, 2011, XXXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 21, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. BCBSM's response was received on August 1, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Flexible Blue II Individual Market Certificate* (the certificate), which describes the Petitioner's benefits. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

On December 8, 2010, the Petitioner had a diagnostic sleep test. BCBSM denied coverage, ruling the test was not a benefit under the certificate. The Petitioner appealed the

denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference on May 25, 2011, and issued a final adverse determination dated June 24, 2011.

III. ISSUE

Is BCBSM required to cover the Petitioner's diagnostic sleep test?

IV. ANALYSIS

Petitioner's Argument

The Petitioner was born with a connective tissue disease called Marfan syndrome. In 2008 she had aortic root repair and in 2009 mitral valve repair surgery. Since that time she has experienced extreme fatigue which can be a symptom of Marfan syndrome.

Because of Marfan syndrome, the Petitioner is able to work only 18 hours per week. In July 2008 she applied for Social Security disability benefits and had to eliminate all causes for her chronic fatigue other than Marfan syndrome. She states a sleep study done a number of years ago showed she had mild sleep apnea and she was not sure if that was the cause of her fatigue. Her doctor recommended a follow-up diagnostic test to determine if her apnea had worsened. The test performed on December 8, 2010, found that she did not have sleep apnea and her doctor concluded that her fatigue was due to Marfan syndrome.

The Petitioner argues that her sleep test should be covered as a diagnostic service under the certificate because BCBSM did not point to any provision in the certificate which excludes sleep testing as a covered benefit. The Petitioner believes the sleep test was medically necessary and that BCBSM is required to cover it.

BCBSM's Argument

It is BCBSM's position that a sleep test is excluded from coverage because it is not specifically listed as covered in the certificate. The certificate states, in "Section 7: General Conditions of Your Contract" (p. 7.1):

We do not pay for the following care and services:

* * *

- Any services not listed in this certificate as being payable

BCBSM believes it has correctly denied payment for the sleep test in accordance with the terms of the certificate.

Commissioner's Review

BCBSM has not disputed the medical necessity of the Petitioner's sleep test. It only states that the test is not a covered benefit under the certificate.

The certificate provides coverage for diagnostic services. The certificate contains the following provision in "Section 4: Coverage for Physician and Other Professional Provider Services" (p. 4.12):

Diagnostic Services

We pay for diagnostic services used by a physician to diagnose disease, illness, pregnancy or injury.

- Physician services are payable for tests such as:
 - Thyroid function
 - Electrocardiogram (EKG)
 - Electroencephalogram (EEG)
 - Pulmonary function studies
- Physician and independent physical therapist services are payable for the following tests:
 - Electromyogram (EMG)
 - Nerve conduction

BCBSM believes that the Petitioner's sleep test is not a benefit because sleep studies are not specifically mentioned in the certificate. The Commissioner disagrees. The provision quoted above states that "physician services are payable for tests *such as*" and then lists four tests. The Commissioner interprets the phrase "such as" in the "for example" sense, i.e., the tests on the list are among those included for coverage but the list is not exhaustive. Furthermore, the four tests listed are not so similar in nature that one would conclude that they constituted a discrete set of diagnostic tests that would reasonably exclude sleep studies. If the certificate had intended to limit diagnostic services to the four tests listed, it would have explicitly stated that fact.

BCBSM states that the certificate excludes coverage for "any services not listed in this certificate as being payable." However, diagnostic tests *are* listed in the certificate as a covered benefit. Therefore, the Commissioner finds BCBSM's denial of the Petitioner's December 8, 2010, sleep test was not consistent with the terms of the certificate.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of June 24, 2011, is reversed. BCBSM shall cover the Petitioner's sleep test according to the terms and conditions of the certificate within 60 days of the date of this Order. BCBSM shall furnish the Commissioner with proof of coverage within seven (7) days after the coverage was provided.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner